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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,994	01/22/2002	Armando R. Lopez		9169

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Evelyn M. Sommer
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825 Third Avenue
New York, NY 10022

EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 08/05/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,994

Applicant(s)

LOPEZ, ARMANDO R.

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 May 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4,6-13,17 and 18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-4,6-13,17 and 18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) Interview Summary (PTO-413) Paper No(s) _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Acknowledgment is made of the amendment filed 5/22/03. Claims pending are 1-4, 6-13, 17 and 18. Claims 5 and 14-16 have been cancelled. Claim 1 has been amended to recite a lathering surfactant in an amount of about 1 to about 10% by weight.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-4, 6-12, 17 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Noll et al. in view of Guck and evidenced by McAtee et al. (US 5,942,238).

Noll et al. teach protective skin compositions in the form of suspensions, emulsions, lotions, ointments and aerosol gels which form a film on the skin effective as a topical barrier, said film being easily removable by washing. See col. 2, lines 25-45; col. 3, lines 18-24, 43-46; col. 14, line 40; col. 17, lines 52-67. The compositions contain glycerin and may contain sunscreens and oleaginous substances such as cetyl alcohol, glyceryl hydroxystearate, and silicones. See Abstract; col. 7, lines 51-58; col. 9, lines 16-21. Noll et al. do not teach a lathering surfactant present in an amount of about 1 to about 10% by weight as claimed in the instant claims. However, Guck teaches compositions for skin protection comprising 1-3% of foaming surfactants such as sodium lauryl ether sulfates. See pp. 3-4 of the translation. Sodium lauryl ether sulfates of Guck are used for reducing the surface tension. See p. 3 of the translation. McAtee et al. teach that lowering of surface tension leads to better softening and breaking up of the lipid and silicone base of the skin products and thus, to improved removing of the lipid- and silicone-containing skin products from the skin. See col. 1, lines 59-64.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Noll et al. such that to employ 1-3% of sodium lauryl ether sulfates of Guck. One having ordinary skill in the art would have been motivated to do this to obtain readily removable skin protecting compositions as suggested by McAtee et al.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noll et al. in view of Guck and evidenced by McAtee et al. as applied to claims 1 and 3 above, and further in view of Kelly et al.

Noll et al. in view of Guck and evidenced by McAtee et al. applied as above. While teaching lipid substances such as cetyl alcohol, glyceryl hydroxystearate and silicones, the reference does not explicitly teach lipids of Claim 13. However, such lipids are conventionally used in skin care compositions for the same purpose as lipids of Noll et al., i.e., as skin emollients and/or protectants. Thus, Kelly et al. teach skin protective compositions in the form of creams and lotions containing beeswax, mineral oil, cetyl alcohol, lanolin and other cosmetic substances. See col. 7, lines 1-26; col. 10, Examples 2 and 3. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use lipids of Kelly et al. for compositions of Noll et al. for their art-recognized purpose.

Response to Arguments

4. The rejection of Claims 1-4, 6-12, 17 and 18 under 35 U.S.C. 102(b) as being anticipated by Noll et al. is withdrawn in view of the amendment of Claim 1.

5. Applicant's arguments with respect to the rejections of Claims 5 and 13 have been fully considered but they are not persuasive.
6. In response to the Applicant's argument that Noll et al. teach away from the use of lathering surfactants of Guck, it is noted that Noll et al. explicitly teach that their compositions must be readily and easily removable from the skin. See col. 3, lines 43-45; col. 13, lines 51-54. As discussed above, the addition of 1-3 % of lathering surfactants of Guck to the compositions of Noll et al., will help to achieve better removability of the skin protecting compositions from the skin.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml
8/2/03


MICHAEL G. HARTLEY
PRIMARY EXAMINER